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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/732,726	12/10/2003	William T. Ball	P06239US1-152	2017

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/732,726
Filing Date: December 10, 2003
Appellant(s): BALL, WILLIAM T.

MAILED
MAY 19 2006
GROUP 3700

Timothy J. Zarley
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 27, 2006
appealing from the Office action mailed October 24, 2005.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application serial no. 10/326,449, filed by appellant December 20, 2002, involves plugging an overflow drain system to allow for leak testing. The application is currently under appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is deficient. 37 CFR 41.37(c)(1)(v) requires the summary of claimed subject matter to include: (1) a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number, and to the drawing, if any, by

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reference characters and (2) for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters. The brief is deficient because at the end of the first paragraph, reference is made to sealing a thin diaphragm 26A over the waste water port 28, but such subject matter is not found at page 7, lines 14-16 and page 6, lines 15-25 as stated by appellant. Moreover, at the end of the second paragraph, reference is made to physically cutting open diaphragm 26A, but such subject matter is not found at page 7, line 30 thru page 8, line 3 and page 9, lines 7-16 as stated by appellant.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection of claim 10 under 112, first paragraph, is withdrawn in light of appellant's arguments at page 7 of the brief.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,618,875	Oropallo et al.	09/2003
2002/0032926	Lewis	03/2002

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6,192,531	Fritz et al.	02/2001
6,088,843	Francisco	07/2000
5,890,241	Ball	04/1999

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ball '241 and Fritz et al. '531. The Ball '241 ('241) reference discloses a method (title) comprising: a bathtub 18 including a bottom 26, side walls 22, end walls 24, an overflow port 30, a waste water port 28, and a drain system 32-42; an overflow port diaphragm 64; and a waste water port 28 including a test plug (col. 2 lns. 59-60). Moreover, '241 also discloses cutting open the diaphragm (col. 3 lns. 2-5). Therefore, '241 teaches all claimed elements except for the test plug being a cut open diaphragm. Although the test plug of the '241 drain system does not include a cut open diaphragm, as claimed, attention is directed to the Fritz et al. '531 (Fritz) reference which discloses an analogous drain system which further includes a test plug (col. 1 lns. 11-13) having a diaphragm (col. 4 lns. 34-41). Therefore, in consideration of Fritz, it would have been obvious to one of ordinary skill in

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the drain system testing art to associate a diaphragm with the '241 test plug in order to enable quick and easy removal.

Furthermore, '241 teaches cutting as one acceptable method of removing such a diaphragm as noted supra.

Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over '241 and Fritz as applied to claim 1 above, and further in view of Francisco. Although the drain system of the '241 bathtub does not include a threaded portion and lock washer, as claimed, attention is directed to the Francisco reference which discloses an analogous bathtub which further includes a drain system 102 having a threaded portion 48 and lock washer 52. Therefore, in consideration of Francisco, it would have been obvious to one of ordinary skill in the bathtub art to associate a threaded portion and lock washer with the '241 drain system in order to facilitate securement.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis, Fritz and Oropallo et al. The Oropallo et al. reference is considered prior art under 102(e) with respect to the filing date of the instant CIP application. The Lewis reference (Fig. 3a) discloses a method (claim 19) comprising: a bathtub 30 including bottom, side and end walls (illustrated), an overflow port (receiving 23), and a drain system 11; and an overflow fitting 20 including an upper end

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portion having threads 23, a lip (illustrated), and a nut 21.

Therefore, Lewis teaches all claimed elements except for the overflow fitting including a diaphragm and cap. Although the overflow fitting of the Lewis drain system does not include a diaphragm, as claimed, attention is directed to the Fritz reference which discloses an analogous drain system which further includes an overflow fitting 12 having a diaphragm 15. Therefore, in consideration of Fritz, it would have been obvious to one of ordinary skill in the drain system testing art to associate a diaphragm with the Lewis overflow fitting in order to facilitate testing. Although the overflow fitting of the Lewis drain system does not include a cap, as claimed, attention is directed to the Oropallo et al. (Oropallo) reference which discloses an analogous drain system which further includes an overflow fitting 11 having a cap 10. Therefore, in consideration of Oropallo, it would have been obvious to one of ordinary skill in the drain system art to associate a cap with the Lewis overflow fitting in order to conceal same.

(10) Response to Argument

Appellant argues at page 8 of the brief Ball does not teach sealing a diaphragm over the waste water port. The examiner can not agree. Ball at column 2, lines 59-60, and appellant at page

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8, lines 30-31, both teach "the port 28 is plugged in any convenient/conventional manner." Appellant further argues at page 8 of the brief Fritz does not teach sealing a diaphragm over a waste water port. The examiner can not agree as Fritz expressly teaches utilizing a test plug 15 to seal a waste drain 21 (col. 3 lns. 11-15). Appellant argues at pages 8-9 of the brief U.S. Patent 6,295,664 was involved with prosecution of a different patent application. This argument is unpersuasive. The noted patent is not evidenced in the file of the instant application.

Appellant argues at page 9 of the brief Francisco was involved with prosecution of a different patent application. Again, this argument is unpersuasive as Francisco is relied upon in the instant application for teaching a threaded portion and lock washer.

Appellant argues at page 10 of the brief Fritz does not teach sealing a diaphragm to the outer end of an overflow pipe. The examiner can not agree. The disclosure in Figs. 4-6 of Fritz, for example, is sufficient to meet the broad claim language "sealing a thin diaphragm to the outer end of the upper end portion to close the inlet to fluid flow".

(11) Related Proceeding(s) Appendix

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer. The appeal concerning application no. 10/326,449, noted supra, has not been decided.

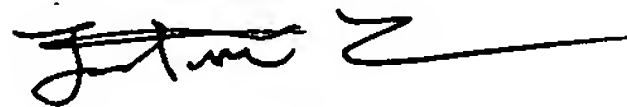
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Robert M. Fetsuga

Conferees:

jry



djw /DJW/